

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

NOTICE OF MOTION NO.1266 OF 2001

IN

SUIT NO.1832 OF 2001.

Nidhi Diamonds & Exports P.Ltd .. Plaintiff

versus

Hukmichand Jain & ors .. Defendants

...

Mr. Shailesh Shah i/b Ms Jyoti Shah for Plff

Mr.H.S.S.Murthy for Defendants.

CORAM : D.G. KARNIK, J

DATED : 17th March 2005.

P.C:-

1. Heard learned counsel for the parties. This suit is filed by the plaintiff for declarations that the plaintiff is the exclusive owner of the suit premises being an office bearing no.422 A situate on the 4th floor of the Panchratna Building, Mumbai and a further declaration that the deed of assignment dated 14th August, 2000, letter dated 30th October, 2000, receipt

dated 30th October, 2000, bill dated 2nd August 2000 and resolution of the board of directors of the plaintiff company dated 8th December, 2000 are illegal and void and are not binding on the plaintiff. By this motion, the plaintiff claims a mandatory injunction directing the defendants to hand over the possession of the suit premises and also prays for the appointment of a receiver. In addition a relief of injunction is claimed restrained the defendant nos. 1 and 2 from disposing or parting with the possession of the suit premises. By an ad interim order dated 21st June, 2001 an injunction restraining the defendant nos. 1 and 2 from transferring the suit property and shares in the defendant no. 4 society has been granted and the said order is in force. At the hearing of the motion a prayer for the appointment of the receiver is pressed.

2. The suit premises are situated in the defendant no. 4 society. The defendant no.3 was the original member/allottee of the suit premises. The defendant no. 3 agreed to sell the suit premises to the plaintiff for a total consideration of Rs.70,50,000/- . The plaintiff alleges that taking advantage of the fact that the sole male director of the plaintiff

company was out of India, the defendant nos. 1 and 2 by force and coercion obtained several documents from the plaintiff and got executed from the female directors a Deed of Assignment dated 14th August, 2000 assigning the plaintiff's right to purchase the suit premises from the defendant no.3. The plaintiff also alleges that the signature of Ms. Rupa Mehta, and the other female director was obtained on the documents by force on 17th November, 2000.

3. Prima facie, I am not impressed by the submission that the documents were obtained by force. The assignment deed also bears the signature of the Chief Accountant of the defendant no.1 company who was admittedly a male person. Though the signature is alleged to have been obtained by force on 17th November, 2000, no police complaint was filed for a period of over one month. Nothing is stated in the plaint for what purpose Mr. Prakash Mehta had gone abroad and when he came back in India and as to what he did after coming back to India. At best, it can be said that it would require evidence and trial to come to the conclusion that the documents were obtained by force.

4. Admittedly, on the date of the suit, the defendant nos. 1 and 2 are not in possession of the suit property. Earlier a suit was filed by the plaintiff in the Bombay City Civil Court, for an injunction in which the plaintiff alleged that they were in possession of the property. However, on refusal of the injunction on merits, the said suit was allowed to be dismissed for want of prosecution and the present suit has been filed in this Court. At the ad interim stage, this Court did not grant the relief of appointment of a receiver. The plaintiff is sufficiently protected by an order of injunction restraining the defendants from transferring the said property. Learned counsel for the defendants has no objection for confirming the ad interim relief during the pendency of the suit. The plaintiff has not shown the present right to dispossess the defendants. In the circumstances, ad interim relief granted by this Court on 21st June, 2001 is confirmed. Prayer for appointment of receiver is rejected. Motion is disposed of accordingly.

D.G.KARNIK, J